

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1.
  - a. Whether there should be additional reimbursement for date of service 04/09/01?
  - b. The request was received on 03/18/02.

### **II. EXHIBITS**

1. Requestor, Exhibit 1:
  - a. TWCC-60 and Letter Requesting Dispute Resolution dated 04/22/02
  - b. UB-92s
  - c. EOBs
  - d. Reimbursement data
  - e. Medical Records
  - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
  - a. TWCC-60
  - b. UB-92s
  - c. EOBs
  - d. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g)(3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 04/26/02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 04/29/02. The response from the insurance carrier was received in the Division on 05/14/02. Based on 133.307 (i) the insurance carrier's 14-day response is untimely. Carrier's documentation received on 03/28/02 and 04/11/02 was considered.
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file

### **III. PARTIES' POSITIONS**

1. Requestor: letter dated 04/22/02  
“(Provider) charges the above-referenced services at a fair and reasonable rate. Specifically, these rates are based upon a comparison of charges to other Carriers and the amount of reimbursement received for these same or similar services.”
2. Respondent: no timely position submitted

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d)(1&2), the only date of service eligible for review is 04/09/01.
2. The provider billed a total of \$6,539.06 on the date of service in dispute.
3. The carrier reimbursed a total of \$5,686.82\* and the EOB has the denial “ALLOWANCE FOR THIS PROCEDURE WAS MADE AT THE USUAL, CUSTOMARY AND REASONABLE AMOUNT FOR THIS GEOGRAPHICAL AREA.”  
\* Includes supplemental payment of \$3,834.84 made on 02/20/02.
4. The amount in dispute per the TWCC-60 is \$4,687.08. The amount in dispute after the supplemental payment of \$3,834.84 is \$852.24.

#### **V. RATIONALE**

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

The provider has submitted EOBs from this carrier to document what they consider inconsistent application by the carrier of it’s own methodology, EOBs from other carrier showing a higher percentage of the billed amount reimbursed, and a reimbursement log of other EOBs. This list of EOBs shows the date of service, the amount billed and reimbursed, percentage of the billed amount reimbursed, and the payer of the bill. The reimbursement rate as a percentage of the billed amount that is shown on this log ranges from a high of 100% to a low of less than 1%.

Regardless of the carrier’s application of it’s methodology, lack of methodology, or response the burden is on the provider to show that the amount of reimbursement requested is fair and reasonable. The provider’s documentation is EOBs or is based on EOBs. However, analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight is given to EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. Therefore, based on the documentation available for review, the Requestor has not established entitlement to additional reimbursement.

MDR: M4-02-2555-01

The above Findings and Decision are hereby issued this 18<sup>th</sup> day of July 2002.

Larry Beckham  
Medical Dispute Resolution Officer  
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.